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In The

Supreme Court of the United States

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, ET AL.

On Exceptions To The Report Of The Special Master

REPLY OF THE COLORADO RIVER INDIAN TRIBES TO THE PROPOSED BRIEF *AMICUS CURIAE* OF THE WEST BANK HOMEOWNERS ASSOCIATION

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I. INTRODUCTION

The State of California, The Metropolitan Water District of Southern California, the Coachella Valley Water District, the United States and the Colorado River Indian Tribes ("Tribes") (collectively "the settling parties") executed the Stipulation and Agreement (Mar. 4, 1999) (Attachment 4 to *Report and Recommendation of Special Master Frank J. McGarr* (July 28, 1999) ("McGarr Report")) to resolve the longstanding dispute over the extent of the water rights for use on the Colorado River Indian Reservation ("Reservation"). The Stipulation and Agreement was subsequently approved by the Special Master who recommended its approval to the Court. McGarr Report at 13-14. Although all of the affected parties to this case continue to strongly support the proposed settlement, the West Bank Homeowners Association ("Association"), whose members lease land from the United States, seeks leave to file a brief amicus curiae to oppose the accord reached by the litigants. *Motion of the West Bank Homeowners Association For Leave to File Brief Amicus Curiae* (dated Dec. 18, 1999, filed Dec. 20, 1999) ("Association's motion"). The Association previously sought unsuccessfully to intervene in the case.

The settling parties have jointly objected to the filing of the Association's proposed brief on the grounds that the proposed brief does not contain relevant matter because it seeks to interject into this interstate water rights adjudication the issue of the United States' administrative treatment of lands which the federal government indisputably owns. *Objection of the State of California, The Metropolitan Water District of Southern California, the Coachella Valley Water District and the Colorado River Indian*

Tribes to the Motion of the West Bank Homeowners Association For Leave to File Brief Amicus Curiae Objection of the State of Arizona (filed Jan. 18, 2000 dated Jan. 19, 2000). This brief responds to the Association's proposed brief in the event that the Court allows the Association to file its pleading.

II. STATEMENT

The lengthy history of the *Arizona v. California* litigation is described in the *Brief for the United States in Support of Exception* at 2-12 (Dec. 20, 1999) ("Brief for the United States"). The flaws in the arguments advanced in the *Brief Amicus Curiae of the West Bank Homeowners Association* (dated Dec. 18, 1999, filed Dec. 20, 1999) ("Association's brief"), however, require further explanation of (1) the history of the dispute over the water rights associated with the land affected by the disputed boundary of the Reservation; (2) the proposed settlement of that long-standing controversy; and (3) the circumstances regarding the management of the area in question.

A. THE CONTROVERSY OVER THE WATER RIGHTS FOR THE WEST BANK LANDS OF THE COLORADO RIVER INDIAN RESERVATION.

1. The History of this Case Regarding the Disputed Boundary of the Colorado River Indian Reservation.

The controversy over the proper location of a portion of the western boundary of the Reservation and the effect of the boundary's location on the water rights for the Tribes have plagued this water rights litigation from the outset. The so-called boundary dispute centers primarily

on certain federal lands currently treated as part of the Reservation. Those lands are shown on the map which is Attachment 1. Other lands south of that area also have been the subject of concern, and the State of California, certain private parties, the United States and the Tribes have brought suit to determine the effect of the movement of the Colorado River on their competing claims to title. *See* Attachment 2 (showing the location of the Reservation and identifying the lands in question commonly called the Ninth Avenue and Olive Lake areas). As all of the parties and the Court have long recognized, the quantity of water rights to which the Tribes are entitled is affected by whether those lands are a part of the Reservation. *See, e.g., Supplemental Decree, Arizona v. California*, 439 U.S. 419, 421 (1979) ("Supplemental Decree").

In the first phase of this case, Special Master Rifkind sought to determine the location of the disputed portion of the western boundary of the Reservation. The first issue which he addressed was whether the boundary was fixed at the time of the pertinent executive order or whether it moved as the river moved. *Report of Simon Rifkind, Special Master* at 274-78 (Dec. 5, 1960). The Master found that the boundary was ambulatory but that in certain locations it had been fixed by the avulsive movement of the river. *Id.* The Court subsequently determined that the Master should not have entered the fray over the proper location of the boundary, stating that it "disagree[d] with the Master's decision to determine the disputed boundaries of the Colorado River Indian Reservation and the Fort Mohave Indian Reservation." *Arizona v. California*, 373 U.S. 546, 601 (1963). Nevertheless, the Court recognized water rights for the Tribes that

were consistent with the Master's findings, both for the northern part of the disputed area and in the two southern areas where the Master found that the river had moved by avulsion thereby fixing the boundary. The Court's subsequent decree provided for an adjustment of the rights decreed for the Reservation in the event "that the boundaries of the respective reservations are finally determined." *Arizona v. California*, 376 U.S. 340, 345 (1964) ("1964 Decree").

In 1969, the Secretary of the Interior sought to resolve a portion of the boundary dispute for the Colorado River Indian Reservation. On the basis of an opinion by the Solicitor of the Department, the Secretary issued an order determining that for the northern portion of the disputed area, the effect of California Civil Code § 830 was to fix the boundary where it was located in 1876 and that the accretions to the western bank as the river moved eastward were a part of the Reservation. *Western Boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, Cal., through Section 12, T. 5 S., R 23 E., S.B.M. Cal.*, No. 90-1-5-668 (Dept. of Interior Jan. 17, 1969) ("1969 Secretarial Order"). In the southern portion of the disputed area, the issue of title to one of the areas affected by the movement of the river was addressed in *United States v. Aranson*, 696 F.2d 654 (9th Cir.), *cert. denied sub nom. Colorado River Indian Tribes v. Aranson*, 464 U.S. 982 (1983). On remand from the Court of Appeals for the Ninth Circuit, the parties to the *Aranson* litigation settled. *Settlement Agreement* (Jan. 22, 1990).

The question of whether the Tribes were entitled to additional water rights for the land declared to be part of the Reservation by the 1969 Secretarial Order was

addressed in the second phase of this case when in 1978 the United States and the Tribes invoked the 1964 Decree to seek additional water rights for the land at issue. The Court ultimately refused to award water rights for those lands, stating: "It is clear enough to us, and it should have been clear enough to others, that our 1963 opinion and 1964 decree anticipated that, if at all possible, the boundary disputes would be settled in other forums." *Arizona v. California*, 460 U.S. 605, 638 (1983) ("*Arizona v. California II*"). The Court stressed that it never intended that decisions by the Secretary could adversely affect the States or private water users without an opportunity for those parties to challenge the decision by the Secretary in Court. *Id.* at 636-40. Following the Court's decision, the provisions of the 1964 Decree and the 1979 Supplemental Decree, governing the modification of tribal rights in the event the boundaries were determined, were left intact. *Compare Arizona v. California*, 466 U.S. 144, 145 (1984) *with* 1964 Decree, 376 U.S. at 345 *and* Supplemental Decree, 439 U.S. at 421.

Concurrent with the proceedings before the Court in *Arizona v. California II*, the State parties sought to challenge the administrative decisions affecting the Colorado River, the Fort Mojave and the Fort Yuma Indian Reservations in the United States District Court for the Southern District of California. 460 U.S. at 638-39. In *Metropolitan Water Dist. of S. Cal. v. United States*, 830 F.2d 139 (9th Cir. 1987), the Court of Appeals for the Ninth Circuit found that there was no jurisdiction for the challenge and this Court affirmed that holding by an equally divided Court. *California v. United States*, 490 U.S. 920 (1989).

2. The Present Proceedings.

Thereafter, the State parties filed their motion in this Court to once again reopen the 1964 Decree "to finally establish the water rights entitlements of the three reservations and to remove the clouds on the entitlements of non-Indian users. . . . " *Motion of the State Parties to Reopen Decree to Determine Disputed Boundary Claims with Respect to the Fort Mojave, Colorado River and Fort Yuma Indian Reservations* at 2 (July 19, 1989). The United States agreed, but carefully worded the issue it thought should be addressed:

> The State parties' motion should be granted insofar as it requests this Court (1) to fix the disputed boundaries of the Fort Mojave, Colorado River, and Fort Yuma Reservations for purposes of determining whether the United States reserved water for those Reservations in addition to that awarded in the Decree and Supplemental Decree, and (2) to determine the amount and priority of any further water rights reserved by the United States.

Response of the United States at 7 (Sept. 1, 1989). In agreeing with the need to determine the extent to which the Colorado River Indian Tribes, the Fort Mojave Indian Tribe and the Quechan Tribe of the Fort Yuma Indian Reservation (collectively "the three tribes") were entitled to additional water rights for the lands at issue, the three tribes pointed out that while it was entirely appropriate to adjudicate their entitlement to additional water rights, that litigation would not and could not resolve the distinct issues of the proper location of the reservation boundaries and the title to the land in question since

those questions were not properly before the Court. *See Response of the Tribes to the Motion of the State Parties to Reopen Decree to Determine Disputed Boundary Claims with Respect to the Fort Mojave, Colorado River and Fort Yuma Indian Reservations* at 4-5 (Sept. 1, 1989). This Court's order "reopen[ed the] decree to determine disputed boundary claims with respect to the Fort Mojave, Colorado River and Fort Yuma Indian Reservations." *Order*, 493 U.S. 886 (Oct. 10, 1989).

The issues raised before Special Master McGarr with regard to the Colorado River Indian Reservation were complex. The Master first determined that he would examine the water rights with regard to the entire length of the disputed portion of the western boundary, rejecting the Tribes' contention that the only area subject to review in these proceedings was that governed by the 1969 Secretarial Order. *Memorandum Opinion and Order No. 4* at 13-14 (Sept. 6, 1991) ("[T]his boundary determination is to create a basis for the allocation of water rights to the claimants in this case."). The Master also refused to order the joinder of those entities who claimed title to the lands in the southern part of the disputed area which was not covered by the 1969 Secretarial Order and where the determination of the boundary in favor of the Tribes would affect the interests of landowners in the area. *Memorandum Opinion and Order No. 8* (Sept. 21, 1992).

Following an evidentiary hearing, the Master determined that the intent of the controlling Executive Order of May 15, 1876 was to establish a riparian boundary that moved with the river subject to the usual rules of accretion and avulsion. *Memorandum Opinion, Report and Order No. 14* (Sept. 20, 1993). He subsequently rejected the

argument of the Tribes and the United States that the effect of California Civil Code § 830 was to include within the Reservation a strip of land east of the ordinary high water mark on the west bank of the river so that when the river moved eastward, the resulting accretions belonged to the Tribes. *Memorandum Opinion and Order No. 18* (Sept. 28, 1995); *see also Memorandum Opinion and Order No. 19* (Jan. 18, 1996).

Not all of the Master's rulings were favorable to the State parties. He rejected their contention that the tribal allocations should be reduced to account for the judgment in *United States v. Aranson*. *Memorandum Opinion and Order No. 16* (Mar. 20, 1995).[1] He also refused to consider the contention by the State of California that it owned the west half of the bed of the Colorado River and that the Reservation could not encompass those lands. *Id.*

3. The Colorado River Indian Reservation Settlement.

With the road map of the likely outcome before the Master in hand, the parties turned their attention to settlement of the water rights dispute for the Reservation. The ultimate resolution, despite its current simplicity, was difficult to achieve, taking over four years to accomplish. Initially, the State of California and the Tribes sought to resolve a host of potential issues that might be affected by the outcome over the proper location of the

[1] The Master issued a separate *Order No. 16* on February 11, 1994 approving the pretrial order for phase II of the proceedings before him.

western boundary of the Reservation in the disputed area. Many of those issues, such as the question of ownership of the bed of the west half of the Colorado River, had been addressed in the course of the litigation over the extent of the tribal water rights. After a lengthy and determined effort to resolve those issues, the parties concluded that the only possibility for a settlement would be to limit the settlement to the question of whether the Tribes were entitled to additional water rights. The settlement approved by the Master is so limited:

> 1. The Tribes would obtain an additional 2,100 acre feet of water per year, subject to the same terms and conditions that apply to the Tribes' existing water rights. (¶ B). The Tribes would also agree not to claim any additional reserved water rights in California. The Tribes' existing rights would not be affected.
>
> 2. The settling parties reserved their respective positions with regard to the location of the Reservation boundary and title to the west half of the bed of the Colorado River. (¶¶ C, D).
>
> 3. The Master's opinions and reports were to have no precedential or preclusive effect among the parties. (¶ F).

McGarr Report at 9-10.

In the words of the Special Master, the settlement "resolves the water rights allocation issue which was at

the heart of the dispute between the parties." *Id.* at 10.[2] Although the Master expressed concern that the issue of the proper location of the boundary had not been resolved, he concluded that the "water rights allocation is a major achievement as to the central issue of water rights and should not be abandoned because peripheral issues remain." *Id.* at 13-14. The Master expressly acknowledged that the boundary dispute "cannot resurface in the future in the context of a tribal water rights claims, thus achieving the finality as to water rights which the Court's reference was seemingly intended to achieve." *Id.* at 13.

B. THE WEST BANK HOMEOWNERS ASSOCIATION.

1. The Association Consists of Tenants Who Seek to Challenge the United States' Administration of Federal Land.

The Association, according to its motion, is comprised of various individuals who live or have lived on the federal lands declared by the Secretary of the Interior to be a part of the Reservation in 1969. *See Arizona v. California II*, 460 U.S. at 631. The members of the Association do not claim title to the lands in question but instead, for undisclosed reasons, would prefer to attempt to lease

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[2] The Special Master's recommendation that the settlement should be approved by the Court followed the Association's ex parte letter to the Special Master that objected to the proposed settlement on similar grounds to those which it raises in its proposed brief. *See* Letter to Frank J. McGarr from John Lindskog (June 18, 1999).

the lands on which they reside from the Bureau of Land Management rather than to continue to lease the lands through the Bureau of Indian Affairs. The Association and its members have steadfastly resisted the Tribes' and the Bureau of Indian Affairs' management of the federal lands on which they reside.

There is no dispute over the federal ownership of the land in question. As the Court noted in *Arizona v. California II*, following the issuance of the 1969 Secretarial Order, "the United States, on behalf of the Tribes, obtained final judgment in title disputes with private parties quieting title in the Tribes to various parcels in the area added to the reservation." 460 U.S. at 631. *See also id.* at 636 n.26. Through extensive litigation, the United States' ownership of the land in question was confirmed and there is no outstanding issue with regard to the federal title to the land. In some cases, the litigation brought by the United States merely involved squatters who had no claim to the land on which they resided. In other instances, complex factual and legal questions were raised concerning the movement of the Colorado River and its effect on adjacent land titles. Other cases involved the scope of federal grants to the State of California under various public land laws. Certain of the resulting judgments expressly provided that the land would be held in trust for the benefit of the Tribes. As the Court previously observed, all such disputes were ultimately resolved. Subsequently, the land has been consistently administered by the United States – the unquestioned owner – for the benefit of the Tribes.

Substantial portions of the lands in question have been leased to non-tribal members and the management of those areas has been extremely difficult. For example, in its motion, the Association refers to its unsuccessful administrative challenge to actions by the Bureau of Indian Affairs terminating the occupation permits of certain of its members. *See* Association's motion at iii. In *West Bank Homeowners Association v. Acting Phoenix Area Director, Bureau of Indian Affairs*, Dkt. No. IBIA 97-8-A (Interior Bd. of Indian Appeals Oct. 23, 1997), the Interior Board of Indian Appeals noted that the only administrative decision of record that was the subject of the appeal was the failure of one of the occupants to pay rent for the three preceding years. Although in this case the Association has not revealed its membership, it appears that virtually all of the individuals who disputed the termination of their leases and who apparently belong to the Association have refused to pay rent to the Bureau of Indian Affairs, despite having entered into leases with that agency and the Tribes.

The Tribes have questioned the United States' diligence in managing the land for the benefit of the Tribes. Thus, in *Colorado River Indian Tribes v. United States*, No. 699-88 L (Fed. Cls. filed 1988), the Tribes brought suit against the United States in the Court of Federal Claims, alleging the failure of the Bureau of Indian Affairs to collect rent for the use of a portion of land known as the Red Rooster Resort. That case has been stayed, in part to avoid a controversy of the sort that has arisen in this case in regard to the Fort Yuma Indian Reservation. *See, e.g.*, Brief for the United States at 18-32. In addition, the United States agreed during the stay to pursue damages

against the trespassing former lessees. That litigation resulted in the United States obtaining a consent judgment against the defendant William Booth directing him to pay $15,000 "to the United States as trustee for the Colorado River Indian Tribes." *Judgment, United States v. Burson*, CV 91-2410 RMT (C.D. Cal. filed Nov. 22, 1993). Although the judgment directed that the property be vacated, the United States has had to return to court repeatedly in its efforts to obtain compliance with the court order. *See, e.g., Order Re: Civil Contempt and Writ of Assistance, United States v. Burson*, CV 91-2410 RMT (C.D. Cal. filed Oct. 17, 1995).

2. The Association's Effort to Interject its Issues in These Proceedings.

The Association has doggedly sought to import its dissatisfaction with the United States' treatment of the federal land in question into this litigation. In 1995, the Court denied the Association's attempt to intervene in this case. *Order* (Apr. 24, 1995). In seeking to intervene, the Association raised many of the same points which it now wishes to present to the Court as amicus. The Master recognized that "[t]he Association does not own land in the disputed area and makes no claim to title or water rights." *Memorandum Opinion and Order No. 17* at 2 (Special Master, Mar. 29, 1995) ("Order No. 17"). With regard to the Association's argument about the authority of the Secretary to issue the 1969 Secretarial Order and to administer the lands in question for the benefit of the Tribes, the Master concluded that the argument would "not be impeded or impaired by the disposition of this

litigation." Order No. 17 at 4. The Master further stated that the Association's position had "no relation to the existing dispute between the original litigants, and the Special Master will not prejudice the existing parties and further delay this lengthy litigation to adjudicate new issues." *Id.* The Master recommended that the Court deny permissive intervention as well as intervention of right. *Id.* at 8. The Court accepted that recommendation.

III. ARGUMENT

A. THE PROPOSED SETTLEMENT WOULD FINALLY RESOLVE THE WATER RIGHTS ISSUES RELATED TO THE COLORADO RIVER INDIAN RESERVATION IN THIS INTERSTATE STREAM ADJUDICATION.

The proposed settlement will finally resolve every remaining controversy over the extent of the reserved water rights for use on the Colorado River Indian Reservation in the State of California. The language of the Stipulation and Agreement is unambiguous:

> The Tribes and/or the United States on behalf of the Tribes shall not claim or be entitled to any additional reserved water rights from the Colorado River for lands in the State of California other than those rights set forth in this Stipulation and Agreement and the prior decrees in *Arizona v. California*.

Stipulation and Agreement ¶ II(B)(4) (McGarr Report, Attachment 4). There is no confusion over that language. Once the settlement is implemented, the dispute over the water rights for the western boundary lands of the Reservation will be finally determined and the Tribes will be precluded from any effort to claim additional water rights under federal law for such lands.

The decree proposed by the settling parties and recommended by the Master confirms the finality of the proposed settlement. *See* McGarr Report, Attachment 6. The recommended decree would strike from the earlier decrees the provisions on which the parties have relied in their efforts to adjust the quantities of water to which the Tribes are entitled. First, the recommended decree would eliminate the critical provision of the 1964 Decree that was inserted to allow water rights adjustments once the boundaries were resolved. *Compare* McGarr Report, Attachment 6 ¶ B, *with* 1964 Decree, art. II(D)(5), 376 U.S. at 345. Second, the recommended decree clarifies that the provisions in the 1979 Supplemental Decree do not provide an independent ground to adjust the tribal water rights for the lands in question. *Compare* McGarr Report, Attachment 6 ¶ C, *with* 1979 Supplemental Decree, 439 U.S. at 421. The result would be a decree that is final as to the water rights for the Tribes' California lands and not open for further revision, no matter what happens with regard to the controversy over the precise location of the Reservation boundary. It would not matter whether more land or less land was finally determined to be a part of the Reservation – the tribal water rights would be as described in the proposed modified decree.

The Association's arguments fail to acknowledge that the proposed settlement finally resolves the extent of the Tribes' water rights. Although left unsaid, that finality is implicitly recognized by the emphasis that the Association places on the role that a resolution by this Court of the proper location of the western boundary might have

on the resolution of other matters in other forums. The Association's contentions regarding the advantages of resolving the boundary now are misplaced.

First, in order to advance its own agenda, the Association would risk the interests of the settling parties who, after five decades, have reached accord over the water rights dispute that is before the Court. The Association blithely assumes that the Master's interlocutory rulings on the host of issues presented to him – which have never been compiled into a final report – would be accepted by the parties and ultimately the Court. Association's brief at 17-18. Certainly, the Tribes are not willing to accept the Master's adverse rulings and there is every reason to believe that the other settling parties, if given the opportunity, would except to the Master's rulings that were contrary to their positions. The settling parties have reached an agreement over water rights; their interests should not be jeopardized in an attempt to accommodate the far different concerns of the Association over the administration of the federal lands which its members would have to lease from the United States under any circumstances. *Cf., Willison v. Watkins*, 28 U.S. 43, 47 (1830) ("[A] tenant cannot dispute the title of his landlord, either by setting up a title in himself, or a third person, during the existence of the lease or tenancy.")

Second, the Association is wrong when it asserts that the expansion of the controversy in this case is necessary to ensure the efficient adjudication of other potential controversies related to the western boundary of the Reservation. *See* Association's brief at 14-16. As the controversy in this case over the Indian Claims Commission

litigation involving the Fort Yuma Indian Reservation demonstrates, the overlap between the various cases involving different claims and issues is complex and the resolution of an issue in one case does not always advance the ability of the courts and parties to efficiently litigate other matters to their final conclusion. Here, the settlement will finally resolve the water rights issues among the parties, while carefully preserving all other issues. *See* Stipulation and Agreement ¶¶ C, D (McGarr Report, Attachment 4). No basis exists for the Association's cavalier assertion that in the absence of expanding this case to include the federal government's treatment of its own land, the matters pending in other cases cannot or will not be resolved in accordance with the applicable law. Association's brief at 16.

Finally, this Court has repeatedly refused to expand this interstate water rights adjudication to include questions outside the area of water rights. *See Arizona v. California*, 373 U.S. at 601; *Arizona v. California II*, 460 U.S. at 638. To be sure, the Court has carefully protected the ability of the State parties to be heard with regard to actions by the Department of the Interior that might affect the outcome of the water rights determination. *See, e.g., Arizona v. California II*, 460 U.S. at 636-37. At the same time, the Court has rejected any effort by the parties to broaden the scope of the litigation to include the determination of title or boundary issues related to the disputed water rights claims. Now that the parties have agreed to resolve the water rights issues, the Court should not switch course to appease a non-party and decline to approve the settlement of the water rights

issues in the absence of a judicial determination of the proper location of the boundary.

B. THE PROPOSED SETTLEMENT DOES NOT CONFLICT WITH THE 1964 ACT.

The Association is wrong when it argues that the proposed settlement conflicts with the Act of April 30, 1964, 78 Stat. 188 ("1964 Act"). The purpose of the 1964 Act was "to declare the Colorado River Reservation . . . to be the property of the Colorado River Indian Tribes." H. R. REP. NO. 88-1304 at 1 (1964) ("House Report"). Because the Reservation was initially established for the Indians of the Colorado River, a dispute had arisen over whether that language would extend the benefits of the Reservation to individuals who were not members of the Tribes but who were "Indians of the Colorado River." House Report at 1-2. The legislation declares the unallotted lands of the Reservation to be held in trust for the benefit of the Tribes, thereby foreclosing continued settlement on the Reservation by other Indians. 1964 Act § 1.

Section 5 of the 1964 Act also extends the Secretary's leasing authority for the Reservation to include 99 year leases. 1964 Act § 5. The Association seizes on section 5 as support for its position because the application of the leasing provisions to the lands west of the river and south of section 25 of township 2 south is foreclosed unless those lands are determined to be a part of the Reservation. *See* Association's brief at 5-7. The legislation, however, does not prescribe the method by which the location of the boundary is to be determined, only that the provisions of the 1964 Act will apply once it is determined. 78

Stat. at 189. It is clear from the history of the 1964 Act that the intent of the provision was to avoid the need for further legislation after the controversy over whether the lands should be included in the Reservation was resolved. House Report at 2.

The simple answer to the Association's concern is that the Reservation boundary has been determined for purposes of the 1964 Act. The Secretary formally declared the area to be within the Reservation in 1969 and subsequently has acted in accordance with that determination. In particular, the United States brought suit against competing claimants, "quieting title in the Tribes to various parcels in the area added to the Reservation." *Arizona v. California II*, 460 U.S. at 631. The United States also proceeded to evict various individuals from the area who failed to enter into appropriate lease agreements with the federal government for the land in question. In other words, those who wished to contest the federal claim to the land in question have had their day in court following the Secretary's determination; that is all that the 1964 Act required.

In any event, even if the concerns of the Association about the effect of the 1964 Act were arguably worthy of consideration, those concerns are not sufficient to set aside the settlement of the longstanding dispute among the settling parties over the extent of the Tribes' water rights. As the Master noted in recommending against the Association's intervention, the Association's argument with regard to the 1964 Act "has existed since *1969*, will continue to exist regardless of the Special Master's boundary determination, and will not be impeded or impaired by the disposition of this litigation." Order No.

17 at 4 (emphasis in original). In sum, the proposed settlement accomplishes only one result: the resolution of the tribal water claims which were the subject of the State parties' 1989 motion. No other issue is affected and the consideration of the Association's arguments elsewhere is not precluded by the proposed settlement. Accordingly, the Court should approve the settlement.

IV. CONCLUSION

For the reasons set forth above, the Tribes respectfully request the Court to disregard the arguments in the proposed amicus brief of the Association and to approve the parties' settlement of the disputed boundary water rights claims for the Colorado River Indian Reservation as recommended by the Special Master.

Respectfully submitted,

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